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ABSTRACT

The courts have applied pressure on local school districts like the Mineapolis (Minnesota) district to reduce the concentration of minority children, including Native Americans, in the schools. This policy brief addresses the issue of creating separate elementary or secondary schools for Native American children. Proponents of separation argue that separate Indian schools, or a high concentration of Native American children in one or a limited number of schools, best meets the educational needs of Native American children. Some reasons public schools fail to meet the needs of American Indian students are: (1) traditions, values, culture, and language of American Indians are not recognized; (2) Indian parents' cannot influence board elections; and (3) school curriculum addressing Indian culture and history is lacking, and often perpetuates stereotypes. Opponents advocate an integrated school system arguing that students attain higher levels of achievement and prepare for functioning in a multi-racial society. Opponents of separation claim that states cannot discriminate to favor Native Americans through separate schools without violating equal protection standards. Proponents argue that Congress' special constitutional relationship with Native Americans enables states to establish separate schools to benefit Indians. (KS)

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HOUSE RESEARCH

Policy Brief

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Native American Education Separate or Integrated?

The courts have for many years applied pressure on local school districts like the Minneapolis district to reduce concentrations of minority children, including Native Americans, in the schools.[1] This policy brief looks at the issue of creating separate elementary or secondary schools for Native American children. It presents pro and con arguments for the major policy and legal questions involved.

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Proponents of separation argue that separate Indian schools, or a high concentration of Native American children in one or a limited number of schools, best meets the educational needs of Native American children. Opponents argue that the children can be educated better in an integrated school system.

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Opponents of separation argue that states cannot discriminate to favor Native Americans through separate schools without violating equal protection standards. Proponents argue that Congress' special constitutional relationship with Native Americans enables states to establish separate schools to benefit Indians.

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Policy Arguments for Integrated Schools

Quality of Education

Racial segregation in schools produces an inferior educational experience for minority students.

Historically, white schools have more resources, better qualified teachers, and superior curricula. Also, many experts argue that the social class composition of a child's school affects academic achievement. A school dominated by minority children is more likely to be a school serving a predominantly lower socio-economic class. For these reasons, minority children who attend racially integrated schools attain higher levels of academic achievement than minority children who attend racially segregated schools.

Social Effects

The concentration and racial segregation of minority students can often lead to societal discrimination.

Racially segregated schools deny minority children the necessary preparation for life in a society dominated by whites. A racially integrated school experience teaches children to function successfully in a multi-racial society. Total segregation denies Indian children the opportunity to learn to live successfully in both Indian and non-Indian worlds.

Quality of Education

The state's education system is unsuccessful in reaching many Native American students.[2] This is shown by high dropout and suspension rates, absenteeism, poor school achievement and behavior and learning problems in disproportionate numbers.

The federal Bureau of Indian Affairs (BIA) operated unaccredited and badly run boarding schools originally designed as instruments of assimilation. They were the focus of controversy. BIA schools and other federal programs and policies created Indian mistrust of government sponsored education.

Although many coercive aspects of BIA education are gone, assimilation remains a basic principle of public education. The state's public education system fails to meet the needs of contemporary American Indian students for many reasons:

- Indian traditions, values, culture and language are markedly different from the dominant culture and must be recognized if a school is to obtain the support and involvement of Indian parents.
- Indian parents' can't influence school board elections and make the school system more responsive to Indian students' needs.
- Indians are dissatisfied with school curriculum and children's lack of exposure to Indian history and culture.
- Textbooks perpetuate Indian stereotypes.
- There is a lack of Indian school personnel to provide students with positive Indian role models.
- There is a shortage of certified teachers skilled in Indian languages and knowledgeable about Indian culture. This suggests a lack of respect by the dominant culture for the Indian culture.

Social Effects

Segregation can be beneficial to Indian students and Indian education programs.

There are major benefits to separating or maintaining high concentrations of Native American students in their own schools.

- Indian students feel more comfortable with their peers; for example the segregation on reservations helps give Indian children an identity, a tradition and a heritage.
- Urban Native American children can develop a strong value system, thereby avoiding cultural deprivation and the accompanying problems.
- A school system can concentrate more of its resources on Indian study materials.
- A school system can target Indian programs more effectively.
- There is more parental and community involvement.

Legal Arguments for Integrated Schools

Preferential Treatment

Unlike Congress, states and school districts cannot discriminate to favor Indians through separate schools.

Federal law favoring Indians singles out for special treatment members of federally recognized tribes who live on or near reservations. The exclusive power of Congress to deal with the special concerns of Indians comes from the Commerce Clause contained in Article I, Section 8, Clause 3 of the U. S. Constitution; Congress is authorized to "regulate Commerce with foreign Nations and among the several States, and with the Indian Tribes."[3] The constitutional provision gives Congress power to regulate commerce with Indian tribes and imposes a federal-tribal relationship marked by broad federal authority over Indian affairs and by special trust obligations[4] that require the federal government to observe strict fiduciary standards in dealing with Indians. Arguably, the principal purpose of the trust relationship is to protect the quasi-sovereign status of Indian tribes as political entities and to promote political self determination.

Neither the state nor a school district enjoys the same constitutional power over Indian affairs that justifies different federal laws governing Indians and non-Indians. Little precedent exists for the ability of states or localities to engage in preferential treatment of urban Native Americans by providing separate Indian schools. Therefore, state laws that treat Indians as a separate and distinct class and that are unrelated to the political status of tribes are invalid. In fact, from the standpoint of Native Americans, it may not be desirable to extend the federal government's authority over Indians to the states, since the government's trust responsibility arguably has become more of a sword for the government than a shield for Indians.

Equal Protection Standards

Laws singling out Indians as a class violate equal protection standards: Any state or federal action directed at Native Americans as a race is subject to strict scrutiny by the courts.

Legislative classifications based upon an innate group characteristic such as race, ancestry or national origin are inherently suspect and are subject to strict scrutiny by courts. For a court to sustain a suspect classification, the state must show that the classification is necessary to serve a compelling state interest. Courts sustain few such classifications. Maintaining, increasing or causing the separation of Native American students in school districts or schools is unrelated to matters of tribal membership or to quasi-sovereign interests of tribal groups or reservations. Consequently, a classification of Native American for purposes of schooling can only be construed to be directed toward a racial group. While meeting the educational needs of Indian children is extremely important, a classification based on race cannot be justified as a compelling state interest if Indian children's needs can be met by means other than promoting segregation.

Preferential Treatment

Like Congress, states and school districts can discriminate to favor Indians through separate schools.

The history of the treatment of Native Americans by Congress justifies interpreting the constitutional relationship between government and Indians as broad and far reaching.

Concurrent state regulatory authority may be permissible in the following circumstances: (1) on reservations where no substantial tribal interest is implicated, (2) where a significant state interest involving off-reservation effects is shown, or (3) where no contrary law or policy exists.

State action for the benefit of Indians can further Congress' unique obligation toward Indians. State action can be protected from challenge under the Equal Protection Clause or civil rights statutes if that state action: (1) does not interfere with tribal government or federal programs; and (2) is rationally related to governmental functions and obligations under the trust doctrine.[5]

This reasoning is supported by recent case law in response to a challenge of the use of federal housing funds by the Minnesota Housing Finance Agency.[6] A federal district court found that an urban housing project open only to Indians fell under the trust doctrine since the trust relationship ranged from protection of treaty rights to the provision of social welfare benefits, and was therefore protected from equal protection challenge. If courts use this analysis to conclude that the federal government's trust relationship with Indian tribes is applicable to the states, states can reasonably pursue the federal policy of Indian self determination in effect since the late 1960's. As long as special treatment on behalf of Native Americans can be tied rationally to the fulfillment of Congress' unique obligation toward Indians, legislative or administrative judgment that an identifiable racial school conferred a benefit on Indian children should not be disturbed.

Equal Protection Standards

Laws singling out Indians as a class do not violate equal protection standards: States may enact protective measures benefitting Indians without violating equal protection guarantees.

There is no constitutional bar to maintaining, increasing or causing the separation of Native American students in school districts or schools if the classification of Native American is "political" rather than "racial" and is intended to benefit Indians.[7] A "benign" classification is subject to lesser judicial scrutiny and requires a less compelling state interest to be substained. Arguably, the "separate is inherently unequal" doctrine contained in Brown v. Board of Education[8] was a response to particular sociological conditions affecting black school children in the 1950's and therefore should not apply to Native American children.

Endnotes

1. In the only case to directly discuss this issue, a federal district court in Booker v. Special School District No. 1, 351 F. Supp. 799 (D.Minn. 1972), found that the Minneapolis school board, through discretionary decisions, "had acted intentionally to maintain or increase racial segregation in the schools" and ordered the district to implement a desegregation/integration plan. In 1977, the school board asked the court to modify its desegregation order by increasing the number of minority students allowed in any one school and by granting a variance from the district's desegregation plan to permit a high concentration of Native American students in one or a limited number of schools. The court agreed to change the minority population enrollment guidelines but denied the board's request to permit a high concentration of Indian students. The court held that the request, if granted, would "condemn white and Negroes and members of other minority groups to attend public schools. . . devoted primarily to the education of minority students." 585 F. Supp. 347, 354 (1978).

2. **A Note on the History of Public Involvement in Native American Education**

The Federal Government's Involvement

Experts argue that the federal government's Indian education policy denied Native Americans their cultural heritage and identity. In the late 1800's, about the time the Dawes Severalty Act* fragmented Indian tribal land holdings and caused the break-up of tribal structures, the BIA began operating boarding schools on and off the reservations. Many believed they were badly run. BIA administrators and teachers believed that Indians could choose only between "Indianness" and complete assimilation into the dominant society. Indian children, starting at six, were away from home for their entire elementary school education. They were taught white values. The schools stressed manual training of questionable educational value and used student labor to keep operating costs low. In 1893 Congress made education compulsory for all Native American children.

During the twentieth century, the federal government's policy on Indian education vacillated between recognition and rejection of Indian tribes and communities. At the turn of the century the government's policy consisted of "coercive assimilation." In the 1930's the government started to recognize tribal self government, but in the 1950's the government sought to end tribal governments. In the 1970's the government adopted a policy of Indian self determination. Federal education programs during the 1930's and since the 1970's have tried to make the educational process more functional for Native American students by incorporating Indians' historical and cultural experiences into school curricula. The emphasis remains, however, on integrating Indians' experiences into existing educational structures and objectives.

Minnesota Involvement

Direct federal involvement in the operation and management of Indian schools declined as state involvement increased. In the early 1900's the state's public school system, federal government day and boarding schools, and mission schools shared the responsibility for educating Minnesota's Native American children. By 1928 federal boarding schools were being phased out in Minnesota. In 1936, under a contract between the state and the BIA, the state took primary responsibility for the education of Minnesota's Native American children.

The 1980 census count for Minnesota showed 11,516 Indian students in grades kindergarten through twelve. Experts believe that the 1990 census will show that the Indian student population is growing.

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* The General Allotment Act of 1887 is commonly known as the Dawes Severalty Act. The Allotment Act authorized the President to allot portions of reservation land to individual Indians. The act contained four provisions: (1) an allotment of 160 acres to each family head, 80 acres to each single person over 18 years old and each orphan under 18 years old, and 40 acres to every other single person under 18 years old; (2) a requirement that allotments be held in trust by the federal government for 25 years; (3) a four year period for Indians to select the land alloted them after which the Secretary of the Interior would select the allotments; and (4) citizenship to allottees and other Indians who abandoned their tribes and became "civilized." The act did not require consent of the tribes or Indians affected.

3. The Treaty Clause (Article II, Section 2, Clause 2) and the Property Clause (Article IV, Section 3, Clause 2) have been considered additional sources of Congress' authority over the affairs of American Indians.

4. See footnote 5 discussing the development of the trust doctrine.

5. In Cherokee Nation v. Georgia, 30. U.S. (5 Ret.) 1 (1831), Chief Justice John Marshall characterized the relationship of Indians to the U.S. as that of "domestic dependent nations" with a right of occupancy of the land until the federal government extinguished their title. Marshall concluded that Indian tribes were "in a state of pupilage" and that "[t]heir relationship to the United States resembled that of a ward to his guardian." That characterization served as a conceptual basis for the evolution of the trust doctrine and defined the required standard of conduct for federal officials and Congress. During the 20th century, the trust principles articulated in Cherokee Nation v. Georgia have been relied upon to establish and protect rights of Indian tribes and individuals.

6. St. Paul Intertribal Housing Board v. Reynolds, 564 F.Supp. 1408 (1983).

7. The political classification derives from the unique status of Indians as a separate people within their own political institutions. Courts tend to uphold special treatment of American Indians in federal laws on the ground that the basis for the discrimination is not race but tribal membership. See also footnote 5.

8. 347 U.S. 483 (1954).